

**Clayton Plumbing Corporation and Plumbers Local Union No. 68, affiliated with United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO. Case 16-CA-15159**

February 28, 1992

**DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT  
AND RAUDABAUGH

Upon charges filed by the Union, Plumbers Local Union No. 68, affiliated with United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO, on July 31 and August 30, 1991, the General Counsel of the National Labor Relations Board issued a complaint and an amendment to the complaint against Clayton Plumbing Corporation, the Respondent, alleging that it has violated Section 8(a)(1), (3), and (5) and Section 8(d) of the National Labor Relations Act. Although properly served copies of the charges, the complaint, and the amendment to the complaint, the Respondent has failed to file an answer.

On November 12, 1991, the General Counsel filed a Motion for Summary Judgment. On November 19, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service "all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Respondent was sent, by certified mail, a letter dated October 3, 1991, stating that unless it filed an answer by October 15, 1991, counsel for the General Counsel would file a Motion for Summary Judgment with the Board. On October 8, 1991, the Respondent's registered agent for service of process notified counsel for the General Counsel of a post office box address to which all documents relating to this proceeding should be directed. On that same date counsel for the General Counsel sent to the Re-

spondent at the designated post office address, by certified mail, copies of the amended charge, the complaint, and the letter concerning the necessity for filing an answer. Finally, on October 22, 1991, the Respondent was sent by regular and certified mail, copies of the original charge, the amended charge, the complaint, the amendment to the complaint, and a letter stating that if no answers were filed by November 5, 1991, summary judgment proceedings would be commenced. These documents were sent to the Respondent at three different addresses, including the post office box number designated by the Respondent's registered agent. Copies of the documents sent to two of the addresses were returned to the Regional Office marked "Moved, left no address" and "Undeliverable as addressed, forwarding order expired," while return receipt cards were received from those mailed to the post office box address.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

The Respondent, a State of Texas corporation, is engaged in the business of providing plumbing services with its principal place of business in Houston, Texas. In the course of its business, the Respondent has performed services valued in excess of \$50,000 for Spaw Glass, a Texas corporation engaged in the construction industry, which has itself performed services valued in excess of \$50,000 in states other than the State of Texas. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

Pursuant to a prehire arrangement embodied in a collective-bargaining agreement effective from October 1, 1988, to September 30, 1991, and at all times material in this proceeding, the Union has been the designated exclusive collective-bargaining representative of the Respondent's employees in the following appropriate unit:

All Journeymen and Apprentice Plumbers, excluding all other employees, guards, watchmen and supervisors as defined in the Act.

Since about July 23, 1991, the Respondent has failed and refused to hire applicants for employment who are members of the Union by advertising for an experienced "non-union" plumber in the daily newspaper, the *Houston Post*. The Respondent so styled its em-

ployment advertisement because applicant members of the Union joined, supported, or assisted the Union and in order to discourage employees from engaging in such activities or other protected concerted activities. In addition, since about April 1, 1991, the Respondent has failed to pay all contractually mandated contributions to the Union's pension and welfare funds. Further, since about July 23, 1991, the Respondent has bypassed the contractually mandated exclusive hiring hall and has obtained employees from outside the hiring hall. By these actions the Respondent has repudiated and refused to abide by the collective-bargaining agreement then in effect with the Union.

On the basis of the foregoing uncontested allegations, we find that the Respondent has been engaging in unfair labor practices within the meaning of Section 8(a)(5), (3), and (1) and Section 8(d) of the Act.

#### CONCLUSIONS OF LAW

1. By failing to pay, since about April 1, 1991, all contractually mandated contributions to the Union's pension and welfare funds, and by bypassing, since about July 23, 1991, the contractually mandated exclusive hiring hall and obtaining employees from sources outside the hiring hall, the Respondent has violated Section 8(a)(5) and (1) and Section 8(d) of the Act.

2. By placing an advertisement about July 23, 1991, seeking only "non-union" employees to apply for jobs at its facility, the Respondent has violated Section 8(a)(3) and (1) of the Act.

3. The above unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent has unlawfully repudiated and refused to abide by the collective-bargaining agreement's requirement to make contributions to the Union's pension and welfare funds, we shall order it to make the payments it should have made into the appropriate funds, with interest or other sums applicable to the payments to be computed in accordance with the Board's decision in *Merryweather Optical Co.*, 240 NLRB 1213 (1979).<sup>1</sup> We shall also order the Respondent to make whole any employees who may have suffered losses as a result of its failure to make

the contractually required fund contributions, *Kraft Plumbing*, 252 NLRB 891 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest calculated in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Having found that the Respondent has refused to hire union members and has bypassed a contractually mandated hiring hall and obtained employees from outside the hiring hall,<sup>2</sup> we shall order it to cease and desist from such action and to make whole any individuals who were denied employment because of the Respondent's failure to follow the contractual hiring hall procedure, in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons*, supra.<sup>3</sup>

#### ORDER

The National Labor Relations Board orders that the Respondent, Clayton Plumbing Corporation, Houston, Texas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Repudiating and refusing to abide by the terms of the then effective collective-bargaining agreement by failing to make the required contributions to the pension and welfare funds.

(b) Repudiating and refusing to abide by the terms of the then effective collective-bargaining agreement by bypassing the contractually mandated exclusive hiring hall and obtaining employees from outside the hiring hall.

(c) Discriminating against union members by seeking "non-union" applicants for employment.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Pay all delinquent pension and welfare fund contributions and reimburse employees for any losses attributable to the withholding of those contributions in the manner set forth in the remedy section of this decision.

(b) Make whole any employees who were denied employment because of its failure to follow the contractual hiring hall procedures, with interest as set forth in the remedy section of this decision.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, time-

<sup>1</sup> The Respondent's obligation to recognize the Union and abide by the contract terms ended with the agreement's expiration on September 30, 1991. Because recognition was granted pursuant to a prehire agreement, and there is no allegation that the Union subsequently achieved majority status, the bargaining relationship between the Respondent and the Union is governed by Sec. 8(f) of the Act. See generally, *John Deklewa & Sons*, 282 NLRB 1375 (1987).

<sup>2</sup> Ibid.

<sup>3</sup> We leave to compliance the identification of individuals who have suffered losses as a result of the Respondent's repudiation of contract terms.

cards, personnel records and reports, all records concerning the above-mentioned contractual provisions and the funds they describe, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its Houston, Texas facility copies of the attached notice marked "Appendix."<sup>4</sup> Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

#### APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

<sup>4</sup>If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT fail to pay into contractually mandated union pension and welfare funds.

WE WILL NOT bypass a contractually mandated union hiring hall in hiring employees.

WE WILL NOT refuse to hire employees because they are members of the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL transmit to the Union's pension and welfare funds those contributions we unlawfully withheld pursuant to the collective-bargaining agreement with the Union.

WE WILL make whole any employees who suffered losses as a result of our failure to make the contractually required contributions into the Union's pension and welfare funds, with interest.

WE WILL make whole any employees who were denied employment as a result of our failure to follow the contractually required hiring hall procedures, with interest.

CLAYTON PLUMBING CORPORATION